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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 867

JOHN HOLLMAN ..... *Petitioner*

v.

THE STATE OF ARKANSAS ..... *Respondent*

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF
THE STATE OF ARKANSAS

BRIEF FOR RESPONDENT IN OPPOSITION

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OPINION BELOW

The opinion of the Supreme Court of Arkansas (Appendix of Petition) is reported at 235 Ark. 662, 361 S.W. 2d 663.

JURISDICTION

The jurisdictional requirements are adequately set forth in the Petition.

QUESTIONS PRESENTED

I. Whether the confinement and detention of petitioner and his subsequent conviction was in violation of the due process clause of the Fourteenth Amendment of the Constitution of the United States of America, and the due process clause of Article II, Section 8 of the Constitution of the State of Arkansas.

II. Whether petitioner was denied the rights secured him under Sections 43-601 and 43-605 of Arkansas Statutes (1947) Annotated.

III. Whether the confessions made by petitioner were inadmissible as a result of the coercive circumstances and if the original confession was made under such illegal influence as to invalidate the second confession of petitioner.

FEDERAL CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment to the Constitution of the United States.

ARKANSAS CONSTITUTIONAL PROVISION INVOLVED

Article II, Section 8 of the Constitution of Arkansas.

ARKANSAS STATUTES INVOLVED

The statutory provisions involved are Arkansas Statutes, §§ 43-601 and 43-605, which pertain to the procedure to bring an accused before a magistrate where the arrest was made without a warrant and the conduct of the procedure before the magistrate.

STATEMENT

The petitioner, John Hollman, a professional thief possessing a felony criminal record, was charged and convicted of the crime of receiving stolen property.

The issues before this Court are concerned with the events that transpired prior to the formal accusation by felony information lodged in the Circuit Court of Pulaski County, Arkansas.

A business establishment in North Little Rock was burglarized on October 27, 1958, and ten chain saws of the aggregate value of over $1,000.00 were stolen. That same day, petitioner was questioned by city police for approximately two hours and released (R.53-54). Two or three days thereafter, petitioner was arrested by local law enforcement officers and was confronted by the admitted thief Jerome Wells who implicated petitioner in disposing of the stolen merchandise (R.44). Apparently, cognizant of the futility of the situation, petitioner immediately confessed his part of the crime. He remained confined in the North Little Rock Jail about five days, when he was taken to the office of the prosecuting attorney, obstensibly with an attorney of his choice, Ray Blankenship, and after being advised of his rights again confessed the offense of receiving stolen property (R.29). On November 5, the charge was filed and petitioner was released the following day on a $1,000.00 bail bond (R. 1, 5 and 6).

After numerous continuances, petitioner waived a jury, was tried, found guilty and sentenced to ten years in the State Penitentiary (R.18).

The judgment was timely appealed to the Supreme Court of Arkansas where the two issues, illegal detention and coerced confession, were held without merit. The subsequent petition for rehearing was denied.

ARGUMENT

I

The issues in this case are uniquely narrow and no amount of strained semantics can convert it into one warranting review by this Court on certiorari.

The initial and primary argument of petitioner is that the admission of his confession at trial was in violation of due process of law. In support of this allegation, petitioner declares that the decision below is in direct conflict with many pronouncements of this Court.

Respondent submits to the contrary that the decision of the Arkansas Supreme Court is clearly correct and that a factual analysis of the cases cited by petitioner reveals that there is no apparent conflict with the rulings of this Court.

There is no controversy that petitioner, after being arrested and confronted by the confession of his accomplice, Wells, expressed his own guilt. The testimony is unsettled as to whether petitioner's confession was voluntary or made in response to threats, insinuated or otherwise. The trial judge resolved the issue adverse to petitioner concluding that the confession was voluntary and therefore admissible. It is well settled that in this Court, the appraisal of conflicting evidence is for the court below, and that conclusion deserves decisive respect. *Lisenba* v. *California*, 314 U.S. 219, 227; *Stein* v. *New York*, 346 U.S. 156, 182. Thus, the status of the voluntary nature of the confession on review is not susceptible to petitioner's wistful interpretation.

At this juncture the lack of substance of petitioner's contention is revealed. The decision of *Reck* v. *Pate*, 367

U. S. 433, although relied upon by petitioner, supports the respondent's position. The following appropriate language distinguishing the dilemma of a 19 year old moron sentenced to life imprisonment is found at page 442 of that opinion:

> "It is true that this case lacks the physical brutality present in *Brown* v. *Mississippi*, 297 U.S. 278, the threat of mob violence apparent in *Payne* v. *Arkansas*, 356 U.S. 560, the thirty-six hours of consecutive questioning found in *Ashcraft* v. *Tennessee*, 322 U.S. 143, the threats against defendant's family used in *Harris* v. *South Carolina*, 338 U.S. 68, or the deception employed in *Spano* v. *New York*, 360 U.S. 315, and *Leyra* v. *Denno*, 347 U.S. 556."

In that same opinion, these further differences were noted:

> "Nor were they 'inexperienced in the ways of crime or its detection' or 'dumb as to their rights.'" *Stein* v. *New York*, 346 U.S. 156, at 186.

In view of these acknowledged distinctions, petitioner's unqualified statement that these cases are in direct conflict becomes untenable. Tacit recognition is given this fact by petitioner's reference to *Payne* v. *Arkansas*, 356 U.S. 560, note 15 at page 568, but reasons that the prominent factor in the leading case of *Stein* v. *New York*, *supra*, was that the confession was found to have been voluntary.

It must be reiterated that here petitioner was arrested at his home and it was known to his wife that he was taken by the North Little Rock Police Officers (R. 35). He was a mature man educated by experience in criminal procedure as evidenced by his lengthy felony

record (R.63,64). Although, as a result of successful continuances by his attorney, petitioner was not tried until more than three years after he was charged (R.1,18), his assertion that his family was not permitted to visit him is entirely uncorroborated by testimony from his family. In spite of the fact that petitioner had over 39 months to prepare for the trial, he failed to subpoena his first attorney, Ray Blankenship, to clarify an otherwise privileged disclosure of his confession to the prosecuting attorney, but was rather content to rely on the insinuation that Ray Blankenship was not his friend and employed counsel. So, in the case at bar, the only reasonable conclusion that this record will support is that the petitioner's confession here was also voluntary and a contrary judgment would have been a travesty of justice.

II

The second matter urged by petitioner is that since he was arrested without a warrant and was not brought immediately before a magistrate as required by Arkansas Statutes, he was denied rights secured to him as a citizen of the State of Arkansas. Ark. Stats. §§ 43-601, 43-605 (1947); Petition, pp. 3 and 4. It has been held, however, that such conduct does not, of itself, invalidate the confession of the prisoner. *State* v. *Browning*, 206 Ark. 791, 178 S.W. 2d 77. An almost identical situation occurred in *Lisenba* v. *California*, 314 U.S. 219, *supra*, where it was stated:

> "But illegal acts, as such, committed in the course of obtaining a confession, whatever their effect on its admissibility under local law, do not furnish an answer to the constitutional question we must decide. The effect of the officers' conduct must be appraised by other considerations in determining whether the use of the confessions was a denial of due process. Moreover, petitioner does

> not, and cannot, ask redress in this proceeding for any disregard to due process prior to his trial. The gravamen of his complaint is the unfairness of his confessions, and what occurred in their procurement is relevant only as it bears on that issue."

Petitioner relied upon but two decisions to support his contention of error. In *Payne* v. *Arkansas, supra,* 356 U.S. at 563 the same enactments in controversy here were noted, but no comment was offered for the failure to comply with the statutes. The other case cited, *Mallory v. United States,* 354 U.S. 449, is, of course, concerned with federal procedure which is not applicable to the courts of Arkansas.

Hence, this assertion lacks merit.

III

The final point urged by petitioner is that the illegal conduct of the police subsequent to his first confession is relevant to determine the attitude of the original questioning. In support of this proposition, petitioner relies on *Haley* v. *Ohio,* 332 U.S. 596, and *Reck* v. *Pate,* 367 U.S. 433, 444.

While it may be conceded that such evidence may be indicative of the callous temperament of the officers, there is no indication in the record that the trial judge did not give proper consideration to all of the evidence. Moreover, the court below (Appendix of Petition, p. 14) observed:

> "Here, however, we do not perceive that the later events have any tendency to support Hollman's testimony that the officers displayed their blackjacks and threatened him with physical abuse."

The testimony was undisputed that during the few days following petitioner's confession and while he remained in confinement, the police, as a result of an exhaustive investigation, recovered a total of some thirty chain saws which had been stolen (R.45). In this respect, the case at bar is not dissimilar to *United States* v. *Mitchell*, 322 U.S. 65, where the accused was illegally detained eight days while the police investigated other thefts that had been revealed by his confession. There, it was reasoned "the illegality of Mitchell's detention does not retroactively change the circumstances under which he made the disclosures."

The foremost principle is the search for truth to be kept separate from falsity which may grow as a compromise in face of coercion. Although the action of the police holding petitioner may be far from commendable, it was reasonable to them at that time to prohibit the frustration of their efforts of seeking out additional offenses. This singular purpose cannot adversely affect an otherwise voluntary confession.

CONCLUSION

Petitioner has not only failed to show that the judgment below was invalid but has also neglected to demonstrate any important question in the case. The disappointing experience suffered by petitioner was simply the result of a fair trial. Respondent urges that the petition for writ of certiorari should be denied.

Respectfully submitted,

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Friday, May 10, 1963